In deciding that appellee had waived his right to rescind, the court necessarily assumes the right to have existed subsequent to the sale. By the weight of authority in this country and England, the rule on the right of a purchaser to rescind a sale on breach of warranty is as stated in *Thornton* v. *Wynn,* 12 Wheat. 184 and *Street* v. *Blay,* 2 B. & A. 456, wherein it was held that no such right existed in cases where title had passed to the vendee unless there had been fraud, or unless the right was given by breach of a condition subsequent. See 16 HARV. L. REV. 465, where the cases are collected and commented on by Professor Williston. Opposed to this is the case of *Bryant* v. *Ishberg,* 13 Gray 607, where the court came to the conclusion that * * * "a warranty may be treated as a condition subsequent at the election of the vendee, who may, upon a breach thereof rescind the contract and recover back the amount of his purchase money as in case of fraud." As to the status, strength and respective merit of the conflicting views in our courts, see a running discussion between Professors Williston and Burdick in 4 COL. L. REV. 2, 194, 265, wherein the former ably supports the Massachusetts rule and the latter strongly contends for the law of *Street* v. *Blay.* The instant case fails to state explicitly the court's conception of the stand taken by the Kentucky courts on the question. Inferentially it holds to the right to rescind. In the case of *Lightburn* v. *Cooper,* 1 Dana (31 Ky.) 273, the court decided that "a simple warranty and tender even though there has been a breach of the warranty, cannot operate as a rescission." No subsequent cases have been found overruling this case. Cases cited by the court in the instant case, where the right to return the goods was considered, contained provisions for rescission on breach of warranty. *Dick* v. *Clark Jr. Electric Co.,* 161 Ky. 622; *McCormick* v. *Arnold,* 116 Ky. 508, or for replacement of any and all defective parts, *Meek Coal Co.* v. *Whitcomb Co.,* 164 Ky. 833; or, as in *Yeiser et al.* v. *Russell & Co.,* 26 Ky. L. Rep. 1151, the breach went to a condition and was waived by retention of the goods. Unless, therefore, there was some provision in the contract of sale for returning the goods on breach of warranty omitted from the report of the case under discussion, the court's assumption that such right existed in Kentucky, was fallacious. Under the rule of *Lightburn* v. *Cooper,* the court would have arrived at the same conclusion on the ground that a mere breach of warranty and tender would not operate to revest the title in the seller, or if the matter be considered as breach of a condition, the acceptance and use beyond the time necessary for inspection would be deemed a waiver of the right to rescind and the vendee would be put to his action for damages for breach of warranty.

TRADE-MARKS—INDEPENDENT ORIGINATORS.—Complainant had built up, in Massachusetts and to a certain extent throughout the Union, a business which used the trade-mark "Rex" for medical preparations. Defendant, unaware of this, used the same word as a trade-mark for similar goods and had built up a local business in Kentucky. Complainant sued to restrain defendant from further use of the trade-mark "Rex" on the ground that it was an infringement. *Held,* the decree of the District Court should be reversed and an in-

junction denied. *United Drug Co.* v. *Theodore Rectanus Co.*, (Dec. 1918) 39 Sup. Ct. Rep. 48.

It was settled that complainant had been the first to use "Rex" as a trade-mark, but that defendant adopted it in ignorance of complainant's use. The patentee of an invention can restrain others from using his invention regardless of his own use or neglect to use. *Continental Paper Bag Co.* v. *Eastern etc. Co.*, 210 U. S. 405. The fact that the infringer of a patent monopoly believed himself to be the originator of the idea (*U. S.* v. *Berdam Co.*, 156 U. S. 552, 566) or that he did not know the idea was patented, is immaterial. *Royer* v. *Coupe*, 29 Fed. 358. Complainant contended that the first originator of a trade-mark is entitled to its exclusive use wherever his business comes into competition with others, citing *Columbia Mill Co.* v. *Alcorn*, 150 U. S. 460, *et al.* The gist of the decision in the principal case was, that adoption of a trade-mark secures no monopoly whatever, but merely creates a right in respect to a business; that where there is no business there is no right and that defendant, having first built up the business to which the right appertained in the particular locality, had the prior right in that locality. It seems settled that there must be an actual use of the trade-mark to give any right to it. HOPKINS ON TRADE-MARKS, sec. 29. That territorial rights, as between originating claimants, depend on actual territorial use is supported by *Hanover Milling Co.* v. *Metcalf*, 240 U. S. 403, 415; *Gorham Mfg. Co.* v. *Weintraub*, 196 Fed. 957.

VENUE OF ACTIONS—LOCAL ACTIONS AGAINST MUNICIPAL CORPORATIONS.—Two counties, King and Pierce, undertook the improvement of a river, and by reason of their alleged negligence the property of a riparian owner in Pierce county was injured. The owner sued both counties in the court of Pierce county. *Held*, on objection by King county, that the action was brought in the proper place. *State ex rel* v. *Superior Court* (Wash. 1918), 176 Pac. Rep. 352.

The question was one of precedence between two rules, (1) that a municipal corporation must be sued in its own courts, and (2) that a local action must be brought where the wrongful act takes place. Here King county was being sued in Pierce county for a trespass to real property which occurred in the county of venue. The court held that a general rule of venue should be deemed to apply to municipal corporations as well as individuals unless they were expressly excepted. The statute fixing the venue for trespass to real property did not except counties, hence they were like individuals subject to suit where the injury took place.

This is the general rule. In *McBane* v. *People*, 50 Ill. 506, a general statute on change of venue was held to authorize carrying an action out of the defendant county, notwithstanding that by the terms of a special statute it could have been commenced only in the defendant's courts. In *Clarke* v. *Lyons County*, 8 Nev. 181, a general statute authorizing trial in a wrong venue where timely objections were not taken, was held to apply to counties. In *Baltimore City* v. *Turnpike Company*, 104 Md. 351, an action for trespass committed by a city upon land outside the city was held properly brought in